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FADIAH NADWA FIKRI & ORS v. KONSTABLE FAUZIAH MUSTAFA & ORS AND ANOTHER CASE

HIGH COURT MALAYA, KUALA LUMPUR
JOHN LOUIS O'HARA J
[CIVIL SUITS NO: 21NCVC-95-05-2012 & 21NCVC-99-05-2012]
B 29 AUGUST 2014

TORT: *Damages – False imprisonment – Plaintiffs providing legal assistance to arrested detainees – Solicitor and client relationship – Whether established – Whether plaintiffs denied access to meet their clients – Whether s. 28A Criminal*
C *Procedure Code invoked – 'Reasonably believes' – Whether police officer's action to deny access justified under s. 28A(8) – Plaintiffs' failure to disperse from location – Whether plaintiffs unlawfully arrested and detained – Whether plaintiffs informed of grounds for their arrest – Whether plaintiffs denied of their constitutional rights – Whether plaintiffs entitled to general damages – Whether to be compensated for*
D *injuries to their feelings and humiliation which arose from defendants' tortuous acts – Whether aggravated and exemplary damages awarded*

TORT: *False imprisonment – Unlawful arrest by police – Plaintiffs providing legal assistance to arrested detainees – Solicitor and client relationship – Whether established – Whether plaintiffs denied access to meet their clients – Whether*
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CONSTITUTIONAL LAW: *Fundamental liberties – Arrest of persons – Failure to inform grounds for plaintiffs' arrest – Detention of plaintiffs – Whether unlawful – Whether police officer's actions justifiable – Unlawful denial of legal representation – Whether plaintiffs denied of their constitutional rights – Whether plaintiffs entitled to general damages – Whether to be compensated for injuries to*
G *their feelings and humiliation which arose from defendants' tortuous acts – Whether aggravated and exemplary damages awarded*

WORDS & PHRASES: *'Reasonably believes' – Criminal Procedure Code, s. 28A – Meaning and purport*

H The plaintiffs in suit 21NCVC-95-05-2012 ('suit 95') were advocates and solicitors and also lawyers with the Legal Aid Centre ('centre') for the Bar Council. The plaintiff in suit 21NCVC-99-05-2012 ('suit 99') was the chairman of the centre. The factual matrix in suit 95 and suit 99 were broadly similar and stemmed from the same continuing transaction. Both
I the suits were thus jointly heard together. The facts revealed that the plaintiffs provided legal assistance and representation to 14 people who were arrested outside the Brickfields Police Station ('BPS') for holding a candlelight vigil for one Wong Chin Huat. The plaintiffs contended that they were in telephonic communication with those arrested and provided

legal advice to them while standing outside the BPS. They congregated at a spot directly outside the boom barrier nearest to the guard house. However, the plaintiffs submitted that one DSP Jude ('SD6') invoked s. 28A of the Criminal Procedure Code ('CPC') and denied access for the plaintiffs to meet their clients. Since the plaintiffs did not disperse from the location, SD1, SD2, SD3 and SD4 arrested them. Further, it was alleged that the plaintiffs' lawyers were denied access to meet them. The plaintiffs were detained in the BPS until about 4am during which they were ordered to change into lock-up clothes. They were then released on bail in the afternoon on the same day. As a result of the defendants' actions, the plaintiffs filed the present suits and sought damages for, *inter alia*, unlawful arrest, detention and denial of their constitutional rights.

Held (allowing plaintiffs' claim; awarding RM60,000 as combined aggravated and exemplary damages):

(1) The plaintiffs were not part of the candlelight vigil. Their presence there was to render legal representation and advice to their clients. They were there as advocates and solicitors and were in telephonic communication with the 14 people to provide legal advice to them. As a result, there was in existence a solicitor and client relationship between the 14 people and the plaintiffs. Further, SD1, SD2, SD3 and SD4 did not introduce themselves nor informed the plaintiffs of the reasons for their arrest. They were acting under superior orders in effecting the arrest. Therefore, the said arrests were wrongful and unlawful. (paras 11, 12, 20 & 21)

(2) Section 28A(8) of the CPC is to be read with s. 28A(9), (10) and (11). The key words in s. 28A(8) is "reasonably believes". On the facts, SD6's reasons for invoking s. 28A(8) was unreasonable in the circumstances and factual situation of the candlelight vigil outside the BPS. Further, SD6 kept changing his testimony with regards to the reasons for invoking s. 28A(8). As such, there were grounds to doubt the authenticity and veracity of the reasons adduced by SD6. There were also serious issues with regards to SD6's credibility as a witness. (para 23)

(3) The plaintiffs' wrongful and unlawful arrest amounted to (i) false imprisonment; (ii) denial of their constitutional rights; and (iii) unreasonable denial of access to legal advice and representation. The defendants, jointly or severally, had to pay damages to the plaintiffs in both suits. The Ketua Polis Negara in his capacity as the superior officer for all the other defendants and the Government of Malaysia as the employer of all the other defendants were vicariously liable. The fact that the plaintiffs were detained for about 12 hours ought to be considered. The sum of RM15,000 was awarded to each of the plaintiffs as general damages, *ie*, for breach of constitutional rights, false imprisonment and detention (*Malek Hussin v. Borhan Hj Daud & Ors*; refd). (paras 24, 25 & 30)

(4) The aggravated damages were appropriate to compensate the plaintiffs for the injuries to their feelings and the humiliation which arose from the defendants' tortuous acts. The defendants' overall conduct towards the plaintiff's arrest, detention, denial of their constitutional rights and oppressive treatment were considered. As such, it is necessary and befitting that this court expresses its indignation and disapproval by also awarding exemplary damages. Since the defendants' acts were part of a continuing transaction which attracted both aggravated and exemplary damages, it is befitting that the damages be awarded in the form of a single combined sum. Having regard to the nature of the defendants' conduct, each plaintiff was awarded RM60,000 as combined aggravated and exemplary damages. (paras 44-47)

Case(s) referred to:
A v. Bottrill [2003] 1 AC 449 ***(refd)***
Bell v. Midland Railway Company [1861] English Reports 142, 10 CB (NS) 287 ***(refd)***
Broome v. Cassell & Co Ltd [1972] AC 1027 ***(refd)***
Cassell & Co Ltd v. Broome and Another [1972] AC 1027 ***(refd)***
Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors [1994] 1 CLJ 19 HC ***(refd)***
Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors [2009] 5 CLJ 1 CA ***(refd)***
Rookes v. Barnard [1964] AC 1129 ***(refd)***
Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors [1997] 1 CLJ Supp 39 HC ***(refd)***
Thompson v. Commissioner of Police of the Metropolis, Hsu v. Commissioner of Police for the Metropolis [1997] 2 All ER 762 ***(refd)***

Legislation referred to:
Criminal Procedure Code, s. 28A(2), (3), (4), (5), (6), (7), (8), (9), (10), (11)

(Civil Suit No: 21 NCVC-95-05-2012)
For the plaintiffs - M/s Daim & Gamany

(Civil Suit No: 21 NCVC-99-05-2012)
For the plaintiff - M/s Kumar & Partners

Reported by Kumitha Abd Majid

JUDGMENT

John Louis O'Hara J:

Introduction

[1] Civil suits 21NCVC-95-05-2012 and 21NCVC-99-05-2012 were jointly heard before this court. In 21NCVC-95-05-2012 (hereafter referred to as suit 95) the following were the parties:

Plaintiffs

1. Fadiah Nadwa binti Fikri
2. Murnie Hidayah binti Anuar
3. Puspawati binti Rosman
4. Syuihaini binti Safwan

Defendants

1. Konstable Fauziah bt Mustafa
2. Inspector Azlina bt Norzali
3. Konstable Noor Balkhis bt Maazin
4. ACP Wan Abdul Bari bin Wan abdul Khalid
5. DSP Jude Pereira
6. Ketua Polis Negara
7. Kerajaan Malaysia

[2] In 21NCVC-99-05-2012 (suit 99) the parties were as follows:

Plaintiff

Ravinder Singh Dhalliwal

Defendants

1. Timbalan Penguasa Polis Judy Blacious a/l Pereira
2. Penolong Pesuruhjaya Polis

   Wan Abdul Bari bin Wan Abdul Khalid
3. Lans Koperal Saha'ri bin Ehwa
4. Ketua Polis Negara Malaysia
5. Kerajaan Malaysia

[3] The court found in favour of the plaintiffs in both suit 95 and suit 99, and both sets of defendants have filed appeals against the court's decisions.

[4] In handing down its decision on 23 May 2014 the court did state that proper grounds would follow if required. These then are the proper grounds.

The Claim In Suit 95

[5] In suit 95, the plaintiffs seek the following relief:

(a) Ganti rugi am; dan

(b) Ganti rugi teruk ("aggravated damages") dan ganti rugi teladan ("exemplary damages"); dan

(c) Ganti rugi khas; dan

(d) Faedah pada kadar 4% di atas jumlah ganti rugi yang dituntut perenggan (a), (b), dan (c) setahun dari tarikh penghakiman sehingga tarikh penghakiman; dan

(e) Faedah pada kadar 4% di atas jumlah ganti rugi yang dituntut di perenggan (a), (b) dan (c) setahun dari tarikh penghakiman sehingga tarikh penyelesaian penuh;

The Claim In Suit 99

[6] In suit 99, the plaintiff seeks the following relief:

(a) General damages in an amount to be decided by this Honourable Court;

(b) Exemplary damages in an amount to be decided by this Honourable Court;

(c) Interest on the total amount of damages in items (I) to (2) above at the rate of 4% per annum from the date of filing of this Writ and Statement of Claim until the date of full payment;

(d) costs; and/or

(e) such further and/or other relief as may be deemed fit and appropriate by this Honourable Court.

The Witnesses

[7] The following gave evidence during the joint trial:

SP1 - Puspawati bt. Rosman	(P3)	}	
SP2 - Syuhaini bt Safiran	(P4)		
SP3 - Fadiah Nadwa bt Fikri	(P1)		95
SP4 - Mumie Hidayah bt Anuar	(P2)		
SP5 - Ravinder Singh	P1		99
SP6 - Christie Marie AA, Mariesoosai		}	
SP7 - Chan Chee Kong			
SP8 - Shufuyan b. Mohd Shukor			95 & 99
SP9 - Ginie Lim Siew Lin			
SP10 - Ragunath Kesavan			
SD1 - Shari bin Dewa	D3	in	99
SD2 - Fauziah bt Che Mustapha	D1	}	
SD3 - Azlina bt Norzali	D2		95
SD4 - Nor Balkhis bt Mat Zin	D3		
SD5 - ACP Wan Abdul Bari		}	
SD6 - DSP Judy Blacious Pereira			95 & 99
SD7 - ASP Hoo Chang Hock			

Consideration And Evaluation

[8] The factual matrix in suits 95 and 99 are broadly similar and stems from the same continuing transaction. All the plaintiffs, ie, the plaintiffs collectively in both suits 95 and 99 are full-fledged advocates and solicitors and also lawyers with the Legal Aid Centre of the Bar Council. The plaintiff in suit 99 is the Chairman of the Centre.

[9] 14 persons had earlier been arrested outside the Brickfields Police Station (BPS). They were there to show support for a person by the name of Wong Chin Huat by means of a candlelight vigil. Wong Chin Huat had been arrested earlier and was being detained at the BPS.

[10] Upon being informed of the arrest and detention of these 14 persons the plaintiffs rushed to the BPS to provide legal assistance and representation to the 14 persons. They congregated at a spot directly outside the boom barrier nearest to the guard house.

[11] It is clear to this court from a viewing of the videos that the plaintiffs were not part of the candlelight vigil. They were there as advocates and solicitors and were in telephonic communication with the 14 persons and did provide legal advice to them. From the video there could also be heard Ginie Lim raised high pitched voice, coming from inside the BPS. Ginie Lim is SP9 and she was one of the 14 persons arrested.

[12] To the mind of this court there was in existence a solicitor and client relationship as a result of the telephonic communication between the 14 persons and the plaintiffs.

[13] The plaintiffs had requested access to their clients but were told that the officer in charge of the case, DSP Jude (SD6) was in a meeting, and later that he refused to meet them. Plaintiff Fadiah Nadwa then called DSP Jude on his handphone and was told that that their clients had signed waiver certificates.

[14] The plaintiffs then asked DSP Jude to meet them at the boom barrier as their instructions were that their clients had refused to sign the waiver certificates. They wanted to see the waiver certificates.

[15] DSP Jude had approached the plaintiffs, who were all standing outside the boom barrier, and informed them that the waiver certificates had been signed by their clients as he had invoked s. 28A of the Criminal Procedure Code (hereinafter referred to as "CPC"), which allows the police to deny an arrested person the right to legal counsel under certain conditions.

[16] The plaintiffs had asked DSP Jude to specify the grounds for invoking s. 28A(8) of the CPC, but no answer was provided. It was according to the evidence of DSP Jude, the first time that he had ever

invoked s. 28A. DSP Jude also informed the court that he had told ACP Wan Abdul Bari (SD5) during a meeting held that night that there were some lawyers waiting outside BPS but that he had denied the 14 persons' access to their lawyers.

[17] Later that night, SD5 approached the boom barrier with his officers and issued a warning through a loud hailer that everyone disperse within three minutes, declaring that the gathering outside the boom barrier was an illegal assembly. SD5 counted to three and the boom barrier was raised but the plaintiffs were only ones arrested along with a journalist.

[18] The plaintiffs then communicated their arrest to their lawyers, but their lawyers were denied access to the plaintiffs. A police report was then lodged by SP6 (Christie Marie a/l Mariasosai Nathan) to this effect:

[19] The plaintiffs were detained in the BPS until about 4am on Friday 8 May 2009, during which they were ordered to change into "lock-up clothes", and after which they were taken to the Travers Police Station where they spent the rest of the night and the next morning. The plaintiffs were taken back to the BPS and released on bail in the afternoon on the 8 May 2009 about 2.30pm. They were never at all charged in court with any offence let alone the offence of being in unlawful illegal assembly.

Findings

[20] From an evaluation of the evidence including a viewing of the video recordings, these are therefore the court's findings:

(a) the Plaintiffs were never part of the Candlelight Vigil that had gathered outside the BPS;

(b) the Plaintiffs were not holding candles;

(c) the Plaintiffs were standing away from the main body of persons who made up the Candlelight Vigil;

(d) the Plaintiffs were present outside the BPS not for the purpose of participating in the Candlelight Vigil but for the purpose of rendering legal representation and advice to their clients;

(e) when the order to disperse was given by SD5, the Plaintiffs who were not part of the Candlelight Vigil did not disperse but were arrested together with a journalist by SD1, 2, 3, 4 by order of SD5;

(f) SD5 and SD6 and by imputation the Ketua Polis Negara and the Kerajaan Malaysia had knowledge that the Plaintiffs were outside the BPS in their capacity as advocates and. solicitors of the 14 persons detained within the confines of the BPS, and for the purpose of rendering legal assistance to the 14 persons;

(g) SD1, SD2, SD3 and SD4 as seen in the video recording P1, affected the arrest of the Plaintiffs SP1-SP5 without introducing themselves or producing their Kad Kuasa or informing the Plaintiffs of the reasons for their arrest. Yet SD1, SD2, SD3 and SD4 in

Court stated that they had done so. As such the Court is compelled to draw an adverse inference as regards the credibility SDI, SD2, SD3 and SD4. In any case it is clear that SD1, SD2, SD3 and SD4 had been acting under superior orders in effecting the arrest of the Plaintiffs.

[21] Therefore based upon the above the court rules that:

(i) the arrest of SP5 by SD1;

(ii) the arrest of SP3 and SP4 by SD2;

(iii) the arrest of SP1 by SD3;

(iv) the arrest of SP2 by SD4;

to be wrongful and unlawful arrests.

[22] Now coming to s. 28A, s. 28A provides for the rights of a person arrested as follows:

28A. Rights of person arrested.

(1) A person arrested without a warrant shall be informed as soon as may be of the grounds of his arrest by the police officer making the arrest.

(2) A police officer shall, before commencing any form of questioning or recording of any statement from the person arrested, inform the person that he may:

(a) communicate or attempt to communicate, with a relative or friend to inform of his whereabouts; and

(b) communicate or attempt to communicate and consult with a legal practitioner of his choice.

(3) Where the person arrested wishes to communicate or attempt to communicate with the persons referred to in paragraphs (2) (a) and (b), the police officer shall, as soon as may be, allow the arrested person to do so.

(4) Where the person arrested has requested for a legal practitioner to be consulted, the police officer shall allow a reasonable time:

(a) for the legal practitioner to be present to meet the person arrested at his place of detention; and

(b) for the consultation to take place.

(5) The consultation under subsection (4) shall be within the sight of a police officer and in circumstances, in so far as practicable, where their communication will not be overheard.

(6) The police officer shall defer any questioning or recording of any statement from the person arrested for a reasonable time until the communication or attempted communication under paragraph 2 (b) or the consultation under subsection (4) has been made.

(7) The police officer shall provide reasonable facilities for the communication and consultation under this section and all such facilities provided shall be free of charge.

(8) The requirements under subsections (2), (3), (4), (5), (6) and (7) shall not apply where the police officer reasonably believes that:

(a) compliance with any of requirements in likely to result in:

(i) an accomplice of the person arrested taking steps to avoid apprehension; or

(ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or

(b) having regard to the safety of other persons the questioning or recording of any statement is so urgent that it should not be delayed.

(9) Subsection (8) shall only apply upon authorisation by a police officer not below the rank of Deputy Superintendent of Police.

(10) The police officer giving the authorisation under subsection (9) shall regard the grounds of belief of the police officer that the conditions specified under subsection (8) will arise and such record shall be made as soon as practicable.

(11) The investigating officer shall comply with the requirements under subsections (2), (3), (4), (5), (6) and (7) as soon as possible after the conditions specified under subsection (8) have ceased to apply where the person arrested is still under detention under this section or under section 117.

[23] The court refers to s. 28A(8) which clearly provides that the requirements under s. 28A(2), (3), (4), (5), (6) and (7) may be suspended. But s. 28A(8) is to be read with s. 28A(9), (10) and (11). The key words in s. 28A(8) is "reasonably believes". This court finds that the reasons advanced in his witness statement and during cross-examination by SD6 for invoking s. 28A(8) to be unreasonable in the circumstances and factual situation of the candlelight vigil outside the BPS. Moreover SD6 kept on changing his testimony in regard to the reasons for invoking s. 28A(8) and this court therefore has grounds to doubt the authenticity and veracity of the reasons put forward by SD6 for his belief under s. 28A(8), and this court therefore has serious issues in regard to the credibility of SD6 as a witness.

[24] And it therefore follows that all that transpired after the wrongful and unlawful arrest was likewise wrongful and unlawful which therefore amounted to:

(a) false imprisonment and

(b) denial of their constitutional right to be told the grounds for their arrest; and

(c) unreasonable denial access to legal advice and representation.

[25] The court therefore finds in favour of all the plaintiffs (ie in both 95 and 99) as against all the defendants and orders damages to be paid by all the defendants (in both 95 and 99) jointly and severally. The Ketua Polls Negara and the Government of Malaysia are found vicariously liable; the Ketua Polis Negara in his capacity as the superior officer for all the other defendants, and the Kerajaan Malaysia as the employer of all the other defendants.

Damages

[26] In regard to suit 95 the Senior Federal Counsel submitted as follows:

(a) General Damages:

(i) Violation of their Constitutional Rights – Nominal damages of RM1;

(ii) Unlawful detention – RM2,000 – RM15,000.00 per day;

(iii) Nervous Shock – nil;

(iv) Pain, suffering, mental anguish etc – nil;

(b) Aggravated and Exemplary Damages – nil;

(c) Special Damages – nil.

[27] All the plaintiffs prayed for RM30,000 general damages each for unlawful arrest and detention, and denial of their constitutional rights.

[28] The plaintiffs in suit 95 prayed for RM50,000 each as aggravated damages; RM75,000 each as exemplary damages.

[29] The plaintiff in suit 99 prayed for RM50,000 in exemplary damages.

[30] The court awarded RM15,000 per plaintiff as general damages ie breach of constitutional rights, false imprisonment and detention as this amount was in the eyes of the court fair and based on:

(a) the principle of RM25,000.00 - RM30,000.00 per day based upon the decision in *Malek b. Hussin v Borhan b. Daud & Ors* [2008] 1 MLJ 368;

(b) the fact that the Plaintiffs were only detained for about 12 hours.

[31] In regard to aggravated and exemplary damages, there is abundant case law in regard to the underlying principles pertaining to aggravated damages and exemplary damages.

[32] In *Thompson v. Commissioner of Police of the Metropolis, Hsu v. Commissioner of Police for the Metropolis* [1997] 2 All ER 762 @ 774, Lord Woolf MR stated as follows:

> Aggravated damages can only be awarded where they are claimed by the plaintiff and where there are aggravated features about the defendant's conduct which justify the award of aggravated damages.

[33] The Master of the Rolls went on at p. 775 to explain as follows:

> Aggravated features can include humiliating circumstances at the time of arrest or any conduct of those responsible for the arrest or the prosecution which shows that they behaved in a high handed, insulting, malicious or oppressive manner either in relation to the arrest or imprisonment or in conducting the prosecution. Aggravating features can also include the way the litigation and trial are conducted.

[34] In *Roshairee Abd Wahab v. Mejar Mustafa Omar & Ors* [1997] 1 CLJ Supp 39; [1996] 3 MLJ 337, James Foong J (as he then was) followed *Broome v. Cassell & Co Ltd* [1972] AC 1027 and awarded aggravated damages. The head note (9) reads as follows:

> An aggravated damages was to compensate the plaintiff for injuries affecting his feelings arising out of the tortuous acts of the defendants. In assessing this, all circumstances of the case must be taken into account, including the character of the plaintiff: The plaintiff was entitled to self -respect and dignity. By the acts of the first and second defendants he has suffered humiliation, loss of pride and self-esteem. ...

[35] The learned judge went on at p. 50 (CLJ); p. 348 (MLJ) to state:

> While considering the request for exemplary damages, the Court must bear in mind that the objective for an award under this category is to punish the defendants, and to display the Court's indignant attitude towards the acts committed by the defendants. However through the enlightened judgment of Lord Devlin in *Rookes v. Barnard & Ord* [1964] AC 1129 (@ page 1226) such damages must be restricted to a situation where there are 'oppressive arbitrary or unconstitutional action by servants of the government' ...

[36] In *Lembaga Kemajuan Tanah Persekutuan (Felda) & Anor v. Awang Soh Mamat & Ors* [2009] 5 CLJ 1, James Foong FCJ (Abdull Hamid Embong concurring) stated that the gravity of the wrong is also another item to be taken into consideration when awarding exemplary damages. This is spelt out in *Cheng Hang Guan & Ors v. Perumahan Farlim (Penang) Sdn Bhd & Ors* [1994] 1 CLJ 19.

[37] In the same case Abdul Malik Ishak JCA (in a dissenting judgment) stated that the primary purpose of awarding damages is to compensate the aggrieved party for the harm done to him.

[38] His Lordship Abdul Malik JCA then went on to add that the secondary purpose of awarding damages is to punish the wrongdoer and this is done by imposing what is known as exemplary damages or punitive damages or vindictive damages or retributory damages (*Bell v. Midland Railway Company* [1861] English Reports 142, 10 CB (NS) 287 at 308; *Cassell & Co Ltd v. Broome and Another* [1972] AC 1027; and *Rooks v. Barnard* [1964] AC 1129). Exemplary damages would normally be ordered when the

conduct of the wrongdoer has been outrageous as to merit such a punishment. Thus, when the conduct of the wrongdoer discloses malice, cruelty, fraud, insolence, etc, then exemplary damages would be ordered.

[39] *Broome v. Cassel (supra)* laid down the principle that in a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum that they have in mind to award as compensation (which may, of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it, that it can award some larger sum.

[40] In *A v. Bottrill* [2003] 1 AC 449, Lord Nicholls of Burkenhead in delivering the majority judgment of the Privy Council stated at p. 456 that cases satisfying the test of outrageousness will usually involve intentional wrongdoing with, additionally, an element of flagrancy or cynicism or oppression or the like: something additional rendering the wrongdoing or the manner or circumstances in which it was committed particularly appalling.

[41] In *Thompson v. Commissioner of Police of the Metropolis (supra)*, Lord Woolf MR stated at p. 775 as follows:

> ... where exemplary damages are claimed and the judge considers that there is evidence to support such a claim, that though it is not normally possible to award damages with the object of punishing the defendant, exceptionally this is possible where there has been conduct, including oppressive or arbitrary behaviour by police officers which deserves the exceptional remedy of exemplary damages.

[42] SD6 possesses an LLB Hons and CLP. In his evidence SD6 stated he knew of the existence of the plaintiffs outside the boom barrier and he had communicated this information to SD5, because SD6 had told SD5 of his decision to deny access for the lawyers to see their clients. He also told SD5 that there were lawyers outside and that they wanted to see the 14 arrestees. This was communicated in the meeting room.

[43] SD5 admitted during cross-examination that SD6 "ada beritahu ada lawyer nak jumpy client" and that this was the first time they had denied access to lawyers. SD5 also stated that he knew that there lawyers outside as SD6 had "timbulkan" during the meeting. SD5 had also stated that "semasa saya keluar peguam tak pegang lilin" and that he could see (in frame 717 of the video recording P1) the lawyer who asked about the form. Yet SD5 contradicts himself when he says that when the lawyers were arrested he did not know they were lawyers.

[44] This court considers that aggravated damages are appropriate to compensate the plaintiffs for the injuries to their feelings and the humiliation arising out of the tortuous acts of the defendants. SP2 during cross-examination stated "saya tidak dibenarkan berpakaian lengkap. Disuruh tanggalkan baju dalam". SP1-SP4 in their witness statement had stated that they were given lock up uniforms of "sepasang baju dan seluar berwama oren terang ... Kami juga tidak dibenarkan memakai bra dan selipar juga kena ditanggalkan".

[45] This court considers the overall conduct of the defendants in regard to the plaintiffs' arrest, detention, denial of their constitutional rights and resulting treatment to be appalling and oppressive, and as such it is necessary and befitting that this court express its indignation and disapproval by also awarding exemplary damages.

[46] As the defendants acts were part of a continuing transaction which this court has found to attract the imposition of both aggravated and exemplary damages, it is befitting that the damages to be awarded and in the form of a single combined sum.

[47] Having regard to the nature of the defendants' conduct the court awards each plaintiff RM60,000 as combined aggravated and exemplary damages.

[48] The court also awards the plaintiffs costs of RM60,000 to the plaintiffs in suit 95 and RM40,000 to the plaintiff in suit 99.

Order

[49] So ordered accordingly.